

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF NORTH CAROLINA  
CHARLOTTE DIVISION  
DOCKET NO. 3:14-cv-00581-FDW-DCK

|                             |   |       |
|-----------------------------|---|-------|
| LAQUITA NICHOLE MCGINNIS,   | ) |       |
|                             | ) |       |
| Plaintiff,                  | ) |       |
|                             | ) |       |
| vs.                         | ) |       |
|                             | ) | ORDER |
| ALLSTATE INSURANCE COMPANY, | ) |       |
|                             | ) |       |
| Defendant.                  | ) |       |
| _____                       | ) |       |

THIS MATTER is before the Court on Defendant Allstate Insurance Company's ("Defendant's") Motion to Strike Amended Complaint or Alternative Motion for Extension of Time to Answer or Respond (Doc. No. 26) and Plaintiff Laquita Nichole McGinnis' ("Plaintiff's") Motion to Amend the Scheduling Order and Motion to Amend Complaint (Doc. No. 28). For the reasons set forth herein, and pursuant to the terms of this Order, Defendant's Motion to Strike is GRANTED in part and DENIED in part and Plaintiff's Motion to Amend is GRANTED.

On March 11, 2015, the deadline for the parties to file any motions to amend the pleadings,<sup>1</sup> Plaintiff filed an Amended Complaint. (Doc. No. 25). Defendant asserts that prior to filing the Amended Complaint, Plaintiff did not seek consent from defense counsel, nor leave from this Court to amend the pleadings. Plaintiff acknowledges that the "Amended Complaint was filed in error by counsel, without an accompanying motion to amend the complaint or consent of the Defendant, as required by [Rule 15 of the Federal Rules of Civil Procedure]." (Doc. No. 31). On

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<sup>1</sup> Pursuant to the Court's Case Management Order, entered on January 16, 2015, March 11, 2015 was the deadline for the parties to file "[a]ny motion for leave to join additional parties or otherwise to amend the pleadings." (Doc. No. 18).

March 20, 2015, after realizing this error, Plaintiff filed the above-mentioned motion to amend the Scheduling Order and Complaint. (Doc. No. 28).

Because Plaintiff missed the deadlines for amending its Complaint as a matter of course under Rule 15(a), Plaintiff was required to obtain Defendant's written consent, or the Court's leave, prior to filing its Amended Complaint. See Fed. R. Civ. P. 15(b). As noted, there is no dispute that Plaintiff failed to abide by this rule.

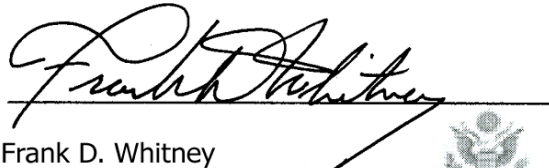
Rule 6 of the Federal Rules of Civil Procedure allows the Court, for good cause, to extend the time for a motion to be made after the time has expired for the motion to be filed. Fed. R. Civ. P. 6(b)(2). The Court notes that while Plaintiff failed to seek Defendant's consent, or the Court's leave, prior to filing its Amended Complaint, it did file the Amended Complaint in a timely manner, i.e., by the deadline set in the Court's Scheduling Order for the parties to amend their pleadings. Therefore, but for Plaintiff's procedural error, the Court would have been bound to "freely" grant leave for Plaintiff to file its Amended Complaint as "justice so requires." See Fed. R. Civ. P. 15(a)(2). Because the Court finds that it would be terribly harsh to deny Plaintiff her day in court because of a modest procedural error by Plaintiff's attorney, the Court GRANTS Plaintiff's Motion to Amend the Scheduling Order and Complaint and DENIES Defendant's Motion to the extent it seeks to strike Plaintiff's Amended Complaint. Accordingly, the Court effectively extends the deadline for Plaintiff to file its motion for leave to amend its Complaint, and the Amended Complaint, filed on March 11, 2015, is deemed as filed in a timely manner. As such, the Court GRANTS Defendant's Motion to the extent it seeks an extension of time to answer the Amended Complaint. Defendant must file its Answer to Plaintiff's Amended Complaint on or before April 28, 2015. All other deadlines provided in the Court's Scheduling Order remain in

effect.

IT IS THEREFORE ORDERED that Plaintiff's Motion to Amend the Scheduling Order and Motion to Amend Complaint is GRANTED, as outlined above. Accordingly, Defendant's Motion to Strike Amended Complaint or Alternative Motion for Extension of Time to Answer or Respond is GRANTED as to Defendant's request for an extension of time to answer Plaintiff's Amended Complaint and DENIED as to Defendant's motion to strike Plaintiff's Amended Complaint. Defendant must file its Answer to Plaintiff's Amended Complaint on or before April 28, 2015.

IT IS SO ORDERED.

Signed: April 13, 2015

  
Frank D. Whitney  
Chief United States District Judge

